



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of

BREWER et al.

Atty. Ref.: 4398-208; Confirmation No. 2505

Appl. No. 10/035,199

Group: 3743

Filed: January 4, 2002

Examiner: PATEL, Mital B.

For: DETERMINATION OF MASK FITTING PRESSURE AND CORRECT MASK FIT

\* \* \* \* \*

January 8, 2004

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RECEIVED**

**JAN 13 2004**

**TECHNOLOGY CENTER R3700**

Sir:

**REQUEST FOR RECONSIDERATION**

In reply to the Office Action dated October 9, 2003, Applicants respectively request reconsideration in view of the following remarks.

In paragraph 1 of the Office Action, the Restriction Requirement is made final. However, as explained in the July 16 response, independent claim 27 is sufficiently broad so as to encompass the methods of claims 28 and 29, all being directed to determining pressure based on past patient use. Moreover, independent claim 27 is allowable for at least the reasons discussed below, and claims 28 and 29 (and their dependent claims) should be rejoined and allowed with independent claim 27 and its dependent claims because the arguments presented below can be applied to claims 28 and 29.

In paragraph 2 of the Office Action, the abstract is objected to. Attached hereto is a new abstract which replaces the old abstract. Withdrawal of the objection is respectfully requested.

Claims 27, 57-62, 64-66 and 69 were rejected under 35 U.S.C. § 102(e) over Lundberg. This rejection is respectfully traversed.

Claim 27 is directed to a method for determining a mask-fit test pressure to be applied to a wearer's mask by ventilatory assistance apparatus. The mask-fit pressure is adaptively determined from prior use.

As described in the Background section of the present application, a known arrangement of CPAP apparatus provides a test mode which may be used prior to the functional or operational mode, whereby the user can test fit the mask. While in the test mode, the apparatus provides a test pressure. The test pressure may be, for example, fixed at 10 cm H<sub>2</sub>O or alternatively the maximum output pressure of the device. During the test mode the mask is fitted to the patient so as to avoid leaks that might occur at the test pressure. Another known arrangement is that the mask test pressure is chosen to be a function of the minimum and maximum pressure settings, as shown in equation 1 on page 1 of the present specification.

By contrast, the mask-fit pressure according to independent claim 27 is adaptively determined from prior use.

Lundberg does not teach or suggest this subject matter. In the Office Action, column 3, lines 16-25 and column 4, lines 28-52 are cited against claim 27. However, the

Because Lundberg does not teach adaptively determining mask-fit pressure from prior use, it also cannot teach the subject matter in the currently restricted claims. For example, claim 28 is directed to a method including measuring by a pressure sensor the mask pressure used by a patient during a treatment session, and determining a mask-fit test pressure from the pressures used by the patient during the treatment session. The pressures used by the patient during the treatment session are one example of a prior use. Claim 29 recites determining a percentile pressure of a previous ventilatory assistance session to be said test pressure. Moreover, because independent claim 27 is generic and allowable over the prior art, the non-elected claims, e.g. claims 28 and 29, must be rejoined and allowed with claim 27.

In view of the above remarks, Applicants respectively submit that all the claims are patentable and that the entire application is in condition for allowance.

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Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, she is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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